

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jessica Long	Team: Team # 2	CCRB Case #: 200301859	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 03/06/2003 11:00 PM	Location of Incident: § 87(2)(b)	Precinct: 69	18 Mo. SOL 9/6/2004	EO SOL 9/6/2004	
Date/Time CV Reported Wed, 03/12/2003 8:29 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Wed, 03/12/2003 8:29 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Cesar Dorado	25149	922279	069 PCT
2. SGT David Stein	05330	898583	069 PCT
3. POF Maritza Bermudez	05943	905782	069 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Louis Accardi	09299	900145	069 PCT
2. POM Anthony Cutaia	02031	928143	069 PCT
3. SGT Patrick Hickey	00843	904147	069 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT David Stein	Abuse: Sgt. David Stein authorized the entry and search of § 87(2)(b) in Brooklyn.	§ 87(2)(b)
B.SGT David Stein	Force: Sgt. David Stein used physical force against § 87(2)(b)	§ 87(2)(b)
C.POM Cesar Dorado	Force: PO Cesar Dorado used physical force against § 87(2)(b)	§ 87(2)(b)
D.POF Maritza Bermudez	Discourtesy: PO Maritza Bermudez spoke obscenely and rudely to § 87(2)(b)	§ 87(2)(b)

Synopsis

On March 6, 2003, at approximately 11:00 PM, officers responded to § 87(2)(b) in Brooklyn, after receiving a call indicating that § 87(2)(b) was being held against her will. According to § 87(2)(b) when the officers arrived, they entered and searched her apartment. § 87(2)(b) further stated that PO Cesar Dorado and Sgt. David Stein used physical force against § 87(2)(b) the father of her child. § 87(2)(b) also indicated that PO Maritza Bermudez used discourteous language with her by stating, “you’re no fucking help.” § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Summary of Complaint

§ 87(2)(b) a § 87(2)(b) year old § 87(2)(b) residing at § 87(2)(b) in Brooklyn, was interviewed at the CCRB on April 21, 2003 (see enc. 7A-E). On March 6, 2003, § 87(2)(b) got a call at work from her mother. § 87(2)(b)'s grandmother, who was in § 87(2)(b) a nursing home in Massachusetts, had been diagnosed with cancer and given two months to live approximately two weeks prior to the date of the incident. When § 87(2)(b)'s mother called on March 6, 2003, she informed § 87(2)(b) that her grandmother was gravely ill, and that § 87(2)(b) should see her as soon as possible. § 87(2)(b) told her mother that she was only going to bring her son, § 87(2)(b) who was § 87(2)(b) years old at the time of the incident, and that she was not going to bring her § 87(2)(b) year-old daughter, § 87(2)(b) because she wanted to spend quality time with her grandmother. § 87(2)(b) then headed home where she was met by § 87(2)(b)

At home, § 87(2)(b) began trying to find someone to sit for her daughter for the two or three days that she was going to be away and also tried to gather up some money at the last minute. § 87(2)(b) called § 87(2)(b)'s cousin § 87(2)(b) (is § 87(2)(b) father) and asked her if she would be able to watch the baby. § 87(2)(b) was at work upstate at a mental facility where she is a nurse, and stated that she would be unable to watch § 87(2)(b). § 87(2)(b) called § 87(2)(b) and explained the situation, and § 87(2)(b) offered to stay with § 87(2)(b) and to lend § 87(2)(b) \$500 for the trip. § 87(2)(b) accepted § 87(2)(b)'s offer. § 87(2)(b) does have an order of protection against § 87(2)(b) from a previous incident in 2001. § 87(2)(b) sees his daughter through § 87(2)(b) (she brings the baby to him etc.) and § 87(2)(b) has not had any problems with him since the incident in 2001. § 87(2)(b) asked § 87(2)(b) if it would be okay if he came by because he would have to pick up § 87(2)(b) and drop off the money since § 87(2)(b) was upstate and this was a last minute situation. § 87(2)(b) said that was fine and he came over.

§ 87(2)(b) began making the travel arrangements with Garibe Express (a company that works out of upper Manhattan) to go to Massachusetts. She was having a hard time because the people at the company are fluent in Spanish and she is not. § 87(2)(b) then called her mother and asked if she would call the company and make the arrangements for her since she is fluent in Spanish. § 87(2)(b)'s mother is an alcoholic and by that time, she had had a few drinks. § 87(2)(b)'s mother called back and said that she had made the arrangements and that § 87(2)(b) should pack both children up because the van would be picking them up at about 11:00 PM. § 87(2)(b) reminded her mother that she was not bringing her daughter and then informed her that § 87(2)(b) would be watching the baby. § 87(2)(b)'s mother dislikes § 87(2)(b) and got upset. § 87(2)(b) reassured her that § 87(2)(b) was not there to see her but just to pick up his daughter but she was drinking and was not listening to § 87(2)(b). They hung up the phone and § 87(2)(b) proceeded to get ready for the trip. § 87(2)(b)'s mother called back, and § 87(2)(b) put her son, § 87(2)(b) on to speak with her. § 87(2)(b) bathed and as she started to get dressed the doorbell rang. § 87(2)(b) went downstairs to answer the bell. There were two police officers at the door, who were identified during the investigation as PO Cesar Dorado and PO Anthony Cutaia. The officers asked if everything was okay. § 87(2)(b) was afraid that the officers were present

to tell her that her grandmother had died. § 87(2)(b) stated “everything’s fine, why, is everything not okay, do you have any news for me or something?” PO Dorado and PO Cutaia said, “no, we got a call.” § 87(2)(b) said, “from who?” They said, “from you.” § 87(2)(b) said “how could you get a call from me- I just got out of the shower and my son is on the phone with my mother.” PO Dorado and PO Cutaia asked § 87(2)(b) whom she was upstairs with. § 87(2)(b) responded that she was with her daughter’s father, her daughter and her son. PO Dorado and PO Cutaia said, “maybe we have the wrong apartment, maybe this isn’t § 87(2)(b)” and they started to walk away. § 87(2)(b) stopped them and said “no, this is § 87(2)(b) but I’m not the only one who resides here, maybe it’s over here or maybe it’s in the basement but I haven’t heard anything.” PO Dorado and PO Cutaia said that they would check it out and § 87(2)(b) went back upstairs. § 87(2)(b) told § 87(2)(b) that it was the police at the door.

About three minutes later, § 87(2)(b) s doorbell started ringing frantically. § 87(2)(b) ran back downstairs and opened the door and at this time PO Dorado and PO Cutaia were present with two other officers, identified during the investigation as PO Louis Accardi and Sgt. David Stein. They asked her “ma’am are you being held against your will?” § 87(2)(b) said, “if I’m being held against my will, what am I doing opening the door, this is twice already, what’s going on?” At this point, § 87(2)(b) was getting upset. The officers said, “we got a call.” She asked “a call from where” and they said “a call from here.” § 87(2)(b) said, “it’s impossible that you got a call from here because nobody’s made any calls from here, I’m tired of this bullshit, I’m trying to get out of the house, what is going on?” The officers asked “who’s upstairs, who’s upstairs?” § 87(2)(b) was trying to let them know what was going on in terms of her grandmother and the fact that she was leaving. At this point, the officers said that they got a call from Connecticut. § 87(2)(b) was baffled because she doesn’t know anyone in Connecticut; she has family in Massachusetts but not in Connecticut. The officers said that they got a call that she was being held against her will and that there were weapons in the house. § 87(2)(b) said, “let me reassure you, I am fine, everything is fine, the only thing that is not fine is that my grandmother is dying and you are becoming a barrier from me getting to see my grandmother.” § 87(2)(b) offered to sign a statement saying that she was fine. § 87(2)(b) told the officers that she was fine before they got there but that she was no longer fine because they were there. The officers said, “no, you’re going upstairs, who’s upstairs?” § 87(2)(b) said, “I already told you who’s upstairs.” Then they said, “we’re going upstairs.” § 87(2)(b) said “no you can’t go upstairs, do you have a warrant?” They responded “it doesn’t matter, we got a call and we have to go upstairs to make sure that you’re okay.” She insisted “I am okay.” The officers then proceeded to § 87(2)(b) s apartment.

When they got to the apartment, § 87(2)(b) tried to open the door but it was locked. She knocked on the door and § 87(2)(b) opened it. As soon as § 87(2)(b) entered the apartment, the four officers scattered and started looking through the apartment. § 87(2)(b) wound up in her bedroom because she was looking for § 87(2)(b) who she didn’t see anywhere. The officers were asking, “where is he?” and “does he have guns? Is there anything here that I should know about?” § 87(2)(b) was asking them “what are you talking about, where is this phone call coming from, is this a drug bust, do you think that I’m selling something out of here, are you looking for somebody that’s a fugitive, what the fuck is going on, are you looking for my safety or is this a façade that you’re creating?” All of the sudden the officers opened the closet, revealing § 87(2)(b) who was crouched down in the corner of the closet. The officers yelled “get out of there” and § 87(2)(b) said “wait a minute, I’m coming out, I don’t have anything in my hands, I’m coming out, I’m just scared because I know I’m not supposed to be here but § 87(2)(b) asked for me to be here, her grandmother’s dying.” § 87(2)(b) was rambling on and saying “she called me, I wasn’t the one who contacted her.” § 87(2)(b) was telling the officers “yes, I called him” and then she asked § 87(2)(b) what he was doing in the closet. § 87(2)(b) said that he was scared because they were going to arrest him and she said “yeah but you should’ve stayed outside, they’re going to arrest you anyway and acting like this is acting like you’re doing something.” During this time, PO Dorado and Sgt. Stein were pulling § 87(2)(b) out of the closet by his hair and arms. As they did so, PO Cutaia reached into the closet and took out a gray duffel bag that was sitting next to § 87(2)(b) on the floor. Once § 87(2)(b) was out of the closet and flat on the floor, PO Dorado and Sgt. Stein dragged him past an armoire, scraping his legs against it in doing so, and over to the doorway of the room. § 87(2)(b) was yelling “you’re hurting me, you’re hurting me” and asking what was going on. The officers were telling § 87(2)(b) not to move and not to resist arrest, and he was then placed in handcuffs. At that point, § 87(2)(b) saw PO Cutaia holding the gray duffel bag. He was asking, “what’s in the bag” and motioning

as if he was going to reach into it. § 87(2)(b) said, "I'll take the bag" and snatched it from him and turned it upside down, pouring all the contents on the floor. § 87(2)(b) stores all of her identification and papers such as bills, tax returns and other important papers in that bag. She also had the \$500 that § 87(2)(b) had just lent to her in the bag. When everything fell out she said "see, there's no fucking guns."

§ 87(2)(b) came running into the room, screaming and § 87(2)(b) took § 87(2)(b) out of the room and went to look for her son, who she hadn't seen since the beginning of the incident. § 87(2)(b) was in the hallway by the kitchen with PO Accardi and PO Dorado. § 87(2)(b) complained to the officers that they had invaded her home and that she felt raped. At this time, two officers in plain clothes, identified during the investigation as Sgt. Patrick Hickey and PO Maritza Bermudez came into the apartment and entered the living room.

PO Cutaia came into the hallway and said to § 87(2)(b) "listen, you may want to go into your bedroom and take a look at your papers and get them up or something." § 87(2)(b) said "what?" She went through the living room where they had § 87(2)(b) in a chair. § 87(2)(b) was asking § 87(2)(b) to tell them that he didn't contact her, that it was she that contacted him. § 87(2)(b) said "I'm gonna get to that now, hold up" and went into the bedroom. § 87(2)(b) and § 87(2)(b) had had a baby in § 87(2)(b) who was stillborn. § 87(2)(b) keeps the pictures of the baby in the gray duffel bag with her papers. When she entered the bedroom, all of the pictures of her son were all over the floor. PO Bermudez had § 87(2)(b)'s papers in small stacks on the bed. PO Bermudez was saying, "what's this? Where's the order of protection, do you have any police reports?" § 87(2)(b) said, "let me reassure you that I am not in jeopardy or anything." PO Bermudez kept saying, "no I want the order of protection" and was going through the paperwork. § 87(2)(b) told her "get your fucking hands off my papers now, you guys can call it in and find out what's up, there's no need to go through all my paperwork, and if you really needed something you could have had one of the many officers that's in this apartment to come and get me since I know what it looks like and I know where it is and I could've gotten it for you. Who the hell are you to be looking at all my shit?" At that point PO Bermudez said, "oh, you're no fucking help" and then she walked out of the room and the apartment. At this time § 87(2)(b) complained to PO Cutaia that there were boot prints all over her pictures. PO Cutaia replied "oh well sorry."

§ 87(2)(b) started asking the officers if they had to take § 87(2)(b) in and they said that by law they did. She said, "I'm not the one that made the call, where did this call come from, what are you guys talking about? He came here to pick up my daughter, I'm getting ready to go." The officers did not listen. § 87(2)(b) had to get § 87(2)(b)'s coat and his boots for him. PO Dorado and Sgt. Stein took § 87(2)(b) downstairs. PO Cutaia stated, "oh, this is unfortunate that you live this way. You really have to take into consideration the way you're bringing up your children. Violence within the household can create children who will have records in the future." PO Accardi came out of § 87(2)(b)'s bedroom (where he had been) and said "yeah, you really got to watch out for the children, I gave your daughter five dollars to make her feel better." § 87(2)(b) asked "what?" He said "yeah, I put it there and your daughter just threw it on the floor so I picked it up and just left it on top of the dresser." She asked why he did that and he said, "just to make her feel better." § 87(2)(b) asked, "what does this look like a crackhead house that you have to make a donation? Within this whole search did you happen to look in my kitchen? What is this, ACS along with it? Did you happen to look in the cupboards; did you happen to notice the grocery shopping? Did you happen to ask me where her sitter resides so you can go and check that out? What else are you guys gonna put on top of it?" § 87(2)(b) said, "first of all, there was nothing going on in this house. Second of all, § 87(2)(b) and me have separate lives. I came into a position where I needed the help, I thank God that he was there to come and help me and now I feel bad that I even asked him because look at the consequences." § 87(2)(b) said that if the officers hindered her from seeing her grandmother and her grandmother died, the officers would "be up shits creek." They said, "do what you got to do" and they left.

§ 87(2)(b) stated that after the officers left she observed a dent in the living room wall. It was a small round dent at shoulder or head height. § 87(2)(b) has plastered it over since then and has no idea how it happened. § 87(2)(b) realized as she cleaned up the apartment that night that paperwork from the gray bag was missing and the money that § 87(2)(b) had lent her was gone. The missing papers include

pages of old income tax statements, paperwork regarding § 87(2)(b)'s previous incarceration, court records and her section 8 voucher. The allegation of missing property was referred to IAB (log 03-09894).

Results of Investigation

§ 87(2)(b) a § 87(2)(b)-year-old student residing at § 87(2)(b) was interviewed at the CCRB on April 21, 2003 (see enc. 5A-C). His mother, § 87(2)(b) was present during the interview. On March 6, 2003, at approximately 11:00 PM, § 87(2)(b) was in his apartment with his mother, § 87(2)(b) his sister, § 87(2)(b) and her father, § 87(2)(b). § 87(2)(b) was talking to his grandmother on the telephone. § 87(2)(b) was taking a bath because they were getting ready to go to Massachusetts to visit her grandmother, who was ill. The call waiting beeped and when § 87(2)(b) answered the call, the caller told him to open the door. He asked who it was and they said that it was the police department. § 87(2)(b) told his mother to open the door downstairs so she went downstairs while he was still talking to his grandmother on the phone. § 87(2)(b) does not know what went on downstairs. § 87(2)(b) came back up alone and got on the phone with her mother. About ten minutes later, the doorbell rang. § 87(2)(b) went downstairs and § 87(2)(b) spoke to his grandmother again and then hung up. When § 87(2)(b) came back into the apartment, there were three police officers with her. Two of the officers came into § 87(2)(b) bedroom, where he and § 87(2)(b) were, and the other officer went with § 87(2)(b) towards the living room. When § 87(2)(b) had seen § 87(2)(b) last, he was in the living room. The officers were telling § 87(2)(b) to stay in the room and saying, "I don't want you to go through this" and "take care of your sister." § 87(2)(b) and § 87(2)(b) stayed in the bedroom. One of the officers went into the living room while the other officer brought § 87(2)(b) into the kitchen and started asking him where his father was. § 87(2)(b) assumed that the officer was speaking about his biological father, not § 87(2)(b) so he said, "I don't know." The officer asked again where his father was and § 87(2)(b) said "in the Bronx" because that is where his father lives. The officer questioned § 87(2)(b) about where his father was for about five minutes, during which time § 87(2)(b) kept saying, "I don't know" and "in the Bronx." Then the officer and § 87(2)(b) went back into his bedroom. § 87(2)(b) heard the officers in the other room saying, "drop anything" and then § 87(2)(b) was saying, "I'm not going to do anything, just let me go, I didn't do anything." § 87(2)(b) ran out of the bedroom towards the living room and § 87(2)(b) went after her. § 87(2)(b) was on the living room floor on his stomach. Two officers were holding him down on the ground with his hands behind his back in handcuffs. § 87(2)(b) kept saying that he wasn't going to do anything and the officers were telling him to be quiet and stay on the floor. § 87(2)(b) was staying on the floor; he was not fighting them or trying to get up. § 87(2)(b) started crying and screaming "get off my daddy, get off my daddy." § 87(2)(b) then brought § 87(2)(b) back into his bedroom. An officer came into the bedroom and gave § 87(2)(b) five dollars. The officers then took § 87(2)(b) out of the apartment and left.

§ 87(2)(b) Attempts to contact § 87(2)(b) were not successful. On April 29, 2003, a please call letter was sent to § 87(2)(b). On May 6th, a call was placed to § 87(2)(b) but his number had been disconnected and no further information was available. On May 6th, a check of Coles for § 87(2)(b)'s telephone number and address yielded negative results. A call was placed to § 87(2)(b) on May 6th in order to obtain any further contact information for § 87(2)(b) but § 87(2)(b)'s number had been disconnected. A letter was mailed to § 87(2)(b) on May 6th, asking her to contact the Investigator with any further information for § 87(2)(b). On June 30th, a final please call letter was sent to § 87(2)(b). A check of Metrosearch for § 87(2)(b) on July 15th yielded negative results. To date, neither letter sent to § 87(2)(b) has been returned to the agency, nor has § 87(2)(b) contacted the Investigator. Also, the letter sent to § 87(2)(b) was not returned to the agency, and she never contacted the Investigator with any further contact information for § 87(2)(b).

On March 6, 2003, § 87(2)(b) was arrested for § 87(2)(b) (see enc. 21A-B).

Officer Identification

PO Dorado was identified through § 87(2)(b)'s arrest report (see enc. 20). PO Cutaia and Sgt. Stein were identified through PO Dorado's CCRB statement. PO Accardi was identified through the roll call (see enc. 24A-C). Sgt. Hickey and PO Bermudez were identified through Sgt. Stein's CCRB statement.

The subject officers of the force allegations were identified through officer statements. PO Bermudez was identified as the subject of the discourtesy allegation because she was the only female officer on the scene, and § 87(2)(b) indicated that it was the female officer who used discourteous language with her.

Officer Statements

PO Dorado was interviewed at the CCRB on July 16, 2003 (see enc. 9A-C). PO Accardi was interviewed at the CCRB on August 7, 2003 (see enc. 11A-B). PO Cutaia was interviewed at the CCRB on August 8, 2003 (see enc. 13A-B). Sgt. Stein was interviewed at the CCRB on August 20, 2003 (see enc. 15A-B). Sgt. Hickey and PO Bermudez were interviewed at the CCRB on August 29, 2003 (see enc. 17A-B, 18A-B). They basically corroborated the following account:

On March 6, 2003, at approximately 11:00 PM, the Precinct TS Operator informed PO Dorado and PO Cutaia that an individual had called the command from Connecticut stating that a male was at § 87(2)(b) in Brooklyn. The male at the location § 87(2)(b) was not supposed to be on the premises, was known to beat the female at the location, and was possibly wanted for a homicide in another state. A call also came over the radio stating that there was a family dispute at the location. PO Dorado and PO Cutaia proceeded to the location where they knocked on the door and rang the bell several times before a Hispanic female § 87(2)(b) answered the door. The officers asked § 87(2)(b) if everything was okay, and she stated that she did not call the police and that everyone was fine. § 87(2)(b) said that she did not understand why the officers were at the location. PO Dorado and PO Cutaia then allowed § 87(2)(b) to go back inside. § 87(2)(b) had appeared upset to PO Dorado. PO Dorado asked central to do a call back, and asked where the call back number came back to. Central indicated that the call came from § 87(2)(b) on the § 87(2)(b). PO Dorado and PO Cutaia requested that another patrol car come to the scene given that § 87(2)(b) may have been wanted for a homicide. The patrol Sergeant, Sgt. Stein arrived at the location with his driver, PO Accardi. Sgt. Stein stated that the officers could not leave the scene until they determined that § 87(2)(b) was safe. The officers then knocked on the door again. § 87(2)(b) answered the door, and the officers asked her who was in her home. § 87(2)(b) responded that she and her two children were home. § 87(2)(b) gave no indication that § 87(2)(b) was present with her. The officers again asked § 87(2)(b) if everything was okay because she seemed agitated and upset. § 87(2)(b) asked, "Why do you keep ringing the bell? What's going on?" § 87(2)(b) was informed that there had been a call to 911 about a dispute at the location, and that the call had come from her apartment. § 87(2)(b) denied calling 911. Sgt. Stein informed § 87(2)(b) that they were going to have to check the apartment to make sure everything was okay. § 87(2)(b) kept asking, "but why?" PO Dorado stated that because there was a call of a family dispute that indicated that the male was wanted for a homicide, the premises needed to be checked for her safety and the safety of her children. PO Dorado stated that because § 87(2)(b) appeared nervous to him, he felt that she might have been forced to tell the officers to go away. Sgt. Stein stated that he asked § 87(2)(b) to enter the premises and she authorized their entry without hesitation.

Sgt. Stein, PO Dorado and PO Cutaia entered § 87(2)(b)'s apartment, and once inside, they entered the front bedroom. When PO Accardi entered the premises, he remained with the children and watched them during the duration of the incident. Sgt. Stein stated that he smelled marijuana upon entering the premises. The officers asked § 87(2)(b) where § 87(2)(b) was, and she stated that she did not know. PO Dorado stated that while in the bedroom, he and the other officers opened a closet door and discovered § 87(2)(b) in boxer shorts, hiding in the closet. PO Cutaia indicated that he saw dreadlocks in the closet that was slightly ajar. PO Dorado and PO Cutaia drew their weapons and asked § 87(2)(b) to show his hands, which he did. The officers then instructed § 87(2)(b) to get out of the closet. While PO Dorado stated that he and PO Cutaia grabbed § 87(2)(b) PO Cutaia stated that it was Sgt. Stein and not he who grabbed § 87(2)(b) and Sgt. Stein confirmed this. PO Dorado grabbed § 87(2)(b) by his upper arm with one hand and his lower arm with another hand, and forced him to the ground face-down. Sgt. Stein stated that he grabbed § 87(2)(b) by his arms and upper torso. Sgt. Stein stated that he and the other

officers were not aware of whether or not § 87(2)(b) was in possession of any weapons and he had to be physically removed from the closet for the officers' safety. Once on the ground § 87(2)(b) was placed in handcuffs. PO Dorado and Sgt. Stein never grabbed § 87(2)(b) by his hair, and they never dragged § 87(2)(b) across the floor. During this time, Sgt. Stein placed a call for assistance and Sgt. Hickey and PO Bermudez responded to the scene. By the time these officers arrived, § 87(2)(b) was already in handcuffs.

Sgt. Hickey stated that when he and PO Bermudez arrived at the location, the odor of marijuana was prevalent. Sgt. Hickey indicated that when he spoke with § 87(2)(b) she stated that she allowed § 87(2)(b) entry into the apartment the previous evening and at that time he began to smoke marijuana in front of the children. § 87(2)(b) told Sgt. Hickey that § 87(2)(b) refused to leave the premises even though she had asked him numerous times to do so. While on the scene, PO Bermudez stated that she looked through a stack of papers for the order of protection, because she was directed to do so by Sgt. Stein. PO Bermudez was unable to locate the order of protection and only uncovered numerous domestic incident reports. PO Bermudez stated that she had no contact with § 87(2)(b) while on the scene.

PO Dorado began to interview § 87(2)(b) who he described as nervous and scared. He asked § 87(2)(b) who § 87(2)(b) was and what he was doing at the location. PO Dorado indicated that § 87(2)(b) was not forthcoming with information and would not provide answers to the aforementioned questions. The officers asked § 87(2)(b) if he had any ID and he replied that his wallet was on the dresser. The officers searched the room for weapons by looking under the bed and in and around the closet where § 87(2)(b) was found. The officers did not find any weapons. After § 87(2)(b)'s ID was obtained, he was ran over citywide. It was determined that there was an active order of protection against him that listed § 87(2)(b) as the individual who filed the complaint. § 87(2)(b) was arrested for criminal contempt for violating the order of protection. PO Dorado subsequently learned that § 87(2)(b) had two other orders of protection against him, one for each of § 87(2)(b)'s children.

Sgt. Stein spoke with § 87(2)(b) and informed her that having § 87(2)(b) at her home, and the marijuana smoke, was endangering the welfare of her children. § 87(2)(b) stated that she and § 87(2)(b) had been smoking marijuana prior to the officers' arrival. § 87(2)(b) told Sgt. Stein that she was trying to leave to go to Massachusetts and that there was a disagreement between her and § 87(2)(b).

§ 87(2)(b) had a dark colored duffel bag with his clothes, and he wanted to put clothes on before being taken from the location. An officer provided § 87(2)(b) with his clothing, but searched the clothing to make sure there were no weapons before giving them to § 87(2)(b). No officer recalled § 87(2)(b) opening a bag and emptying its contents onto the floor. No officer walked over paperwork or photographs. § 87(2)(b) never complained about any of the officers damaging her paperwork or her photographs. No officer used discourteous language with § 87(2)(b). No officer stated to § 87(2)(b) "you're no fucking help." Neither PO Dorado nor any other officer dented a wall in § 87(2)(b)'s home. § 87(2)(b) did not yell or curse at the officers during the incident.

§ 87(2)(b) was escorted from the location, placed in a patrol car and brought to the 69th Precinct.

While Sgt. Stein indicated that PO VanSchuyler arrived on the scene with Sgt. Hickey and PO Bermudez, this is not accurate as evidenced by the roll call (see enc. 24A-C) and Sgt. Hickey and PO Bermudez's CCRB statements.

Communications

A 911 call on March 6, 2003, was made by PO Riley from the 69th Precinct (see enc. 25A-B). He stated that the Precinct received a call regarding a family dispute at § 87(2)(b) between a male and female. The phone number at the location is § 87(2)(b) and the female at the location is § 87(2)(b). PO Riley stated that there are unknown weapons but that an order of protection is involved and that the male is wanted for murder in the Carolinas. The individual, who called the Precinct, called from Massachusetts because § 87(2)(b) was afraid to call herself. The caller identified himself as § 87(2)(b).

§ 87(2)(b) The male is at § 87(2)(b)'s house and he won't let her leave. § 87(2)(b) stated to PO Riley that § 87(2)(b) wants the police but is afraid to call herself.

Police communications indicate that 69E respond to the location and they ask Central if they have a call back for the job, to which Central responds that the complainant is coming out. 69E asks Central if the callback comes back to the location, and Central replies that it does.

Police Documents

The on-line booking sheet (see enc. 19), the arrest report (see enc. 20), and the domestic incident report (see enc. 22), state that officers responded to the location in regards to a family dispute. Upon entering the apartment, the officers discovered § 87(2)(b) hiding in a closet, in violation of an order of protection. The command log (see enc. 23) states that § 87(2)(b) was in "apparently normal" condition.

CCRB History

PO Dorado and PO Bermudez have no substantiated CCRB cases. Sgt. Stein has one substantiated CCRB case, CCRB case 9400187, for force. The Board recommended charges in regards to this allegation. The NYPD disposition regarding this case is not available.

Criminal Conviction History

§ 87(2)(b) has no criminal conviction history.

Conclusions and Recommendations

Undisputed Facts

It is not in dispute that § 87(2)(b) had a valid order of protection against § 87(2)(b) and that he was in her home on the date of the incident. It is also not in dispute that officers responded to the location and entered the premises. It is not in contention that some degree of force was used when arresting § 87(2)(b) and that he was placed under arrest for violating the order of protection.

Credibility

§ 87(2)(g)
§ 87(2)(b) stated that she yelled at the officers, cursed at them, and generally acted in a hostile manner toward the officers present in her home. Yet, all of the officers indicated that § 87(2)(b) did not yell or curse at them, and that she was generally cooperative. § 87(2)(g)
Still, many of the allegations are not in dispute.

§ 87(2)(b) stated that her mother was upset that § 87(2)(b) was present in her home, and that her mother does not like § 87(2)(b). § 87(2)(b) further stated that her mother is an alcoholic and had consumed a few drinks when she was speaking with her. § 87(2)(g)

§ 87(2)(g)
The officers' statements differed in only what they knew about the circumstances surrounding the incident, depending upon how much interaction they had with § 87(2)(b) and their role while on the scene.

§ 87(2)(g)

§ 87(2)(g)
According to § 87(2)(b) she emptied the contents of her duffel bag causing photographs and

paperwork to spill out from it. She stated that she later observed footprints on her papers and photographs, which she believed were caused by the officers. All the officers were questioned in regards to this, and they all stated that they had no knowledge of damaging any of § 87(2)(b)'s property. § 87(2)(g)

Allegation A: Sgt. David Stein authorized the entry and search of § 87(2)(b) in Brooklyn.

§ 87(2)(g)

§ 87(2)(b) stated that the officers, who were at her residence, entered her apartment without her permission, while Sgt. Stein stated that § 87(2)(b) allowed the officers into her apartment. § 87(2)(g)

§ 87(2)(b) The officers were responding to a call made to the Precinct that indicated that § 87(2)(b) was being held against her will by a male known to beat her. The call further stated that an order of protection was involved, and that the male on the premises may be wanted for murder. The caller provided § 87(2)(b) name, address and telephone number to authorities, and central (mistakenly) informed the officers that a call to 911 was made from the location. While a 911 call was not made from the apartment, the officers believed at the time that a call was made from the location.

According to Kamins' *Search and Seizure* (see enc. 1A), under the emergency doctrine "a police officer can enter a premises without a warrant to protect individuals in distress, to assist victims of crimes that have just occurred, or to investigate suspicious signs of impending danger. This exigency, therefore, is based upon the officer's obligation to protect life and property." Kamins' further states that the Court of Appeals has determined three basic requirements which define the guidelines for the application of the emergency doctrine (see enc. 1A). These are

"(1) the police must have reasonable grounds to believe that there is an emergency at hand, and that there is an immediate need for their assistance for the protection of life or property; (2) the search must not primarily be motivated by an intent to arrest and seize evidence; and (3) there must be some reasonable basis, approximating probable cause, to associate the emergency with the area or property to be searched."

§ 87(2)(g)

§ 87(2)(g)

Allegations B and C: Sgt. David Stein and PO Cesar Dorado used physical force against § 87(2)(b) (PG 203-11).

§ 87(2)(b) stated that Sgt. Stein and PO Dorado pulled § 87(2)(b) from the closet by his arms and hair, placed him to the ground and then dragged him across the floor. Sgt. Stein stated that he removed § 87(2)(b) from the closet by grabbing him by his arms and torso. PO Dorado stated that he grabbed § 87(2)(b) by his upper arm with one hand and his lower arm with another hand, and forced him to the ground face-down. Both officers denied dragging § 87(2)(b) on the floor once he was removed from the closet. § 87(2)(g)

According to Sgt. Stein § 87(2)(b) had to be physically removed from the closet, because the officers were not aware of whether or not he was in possession of any weapons. § 87(2)(g)

According to the command log (see enc. 23) § 87(2)(b) was in apparently normal condition and no injuries were noted.

§ 87(2)(g)

Allegation D: PO Maritza Bermudez spoke obscenely and rudely to § 87(2)(b) (PG 203-09).

§ 87(2)(b) indicated that PO Bermudez was looking through her paperwork for the order of protection against § 87(2)(b) and while doing this she stated to § 87(2)(b) “you’re no fucking help.” While PO Bermudez stated that she did look through a stack of papers for the order of protection, she stated that she did not have any contact with § 87(2)(b). PO Bermudez denied stating, “you’re no fucking help.” All of the other officers at the location also denied that the aforementioned statement was made. § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: